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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN GRANT MORELAND,

Defendant and Appellant.

B206416

(Los Angeles County
Super. Ct. No. LA056388)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Martin Larry Herscovitz, Judge. Affirmed.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan D. Martynec and Lance E. Winters, Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed by the Los Angeles County District Attorney, appellant Jonathan Grant Moreland (Moreland) was charged with corporal injury to a cohabitant. (Pen. Code, § 273.5, subd. (a).)¹ It was alleged that Moreland personally inflicted great bodily injury in the commission of the offense. (§ 12022.7, subd. (a).) It was also alleged that Moreland had suffered a prior conviction under the Three Strikes Law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and that Moreland had served a prior prison term (§ 667.5, subd. (b)). Moreland pleaded not guilty and denied the special allegations.

Following trial, the jury found Moreland guilty as charged and found the great bodily injury allegation to be true. The trial court then granted Moreland's motion to strike the prior strike conviction. Moreland admitted the prior prison term.

Moreland was sentenced to state prison for eight years as follows: the upper term of four years, plus three years for the great bodily injury enhancement, plus one year for the prior prison term. He was ordered to pay \$500 in restitution, and a \$500 parole revocation fee was imposed and suspended. He was given presentence custody credit for 247 days, consisting of 215 actual days and 32 days of conduct credit.

Moreland appeals the judgment of conviction, assigning the following errors: (1) The trial court committed reversible error by allowing Los Angeles Police Department Officer Deborah Lewis to testify as an expert on domestic violence. (2) The trial court committed reversible error by allowing the hearsay testimony of Dr. Stanley Yu, the emergency room physician who treated Judy Comden (Comden), the victim of Moreland's crime.

We find no error and, accordingly, we affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prosecution's Case

1. Moreland and Comden constantly fight

At the time of trial, Comden had been in a relationship with Moreland for 13 years and she loved him very much. He had been a good companion and had taken care of Comden. He helped her get around in her wheelchair and ran errands. She did not want to be there at trial, and she was afraid of what was going to happen to Moreland at trial. She did not want anything bad to happen to him. On July 28, 2007, they were living together in West Hills.

Steven Broughton (Broughton) lived at the house with Moreland and Comden. During the time that they all lived together, Broughton had seen or heard Moreland and Broughton argue "quite a bit," "maybe five days a week." They screamed, yelled, insulted each other, and used profanity. Sometimes they argued "for three days straight," "day and night." Several months prior to July 28, 2007, Broughton had seen Comden with a black eye. Broughton had also seen Moreland drinking "quite a bit," and when Moreland drank, he seemed "angry at the world."

2. Moreland throws a glass object at Comden and cuts her head

On July 28, 2007, around 7:00 p.m., Moreland and Comden had an argument about their living conditions. They were both a little drunk, and Comden was on medication. Although their home was "filled with rats and roaches," Moreland had cleaned it. On this evening, however, Moreland was drunk and angry and he messed up the place, knocking things off the table and counters. Two antique lamps and several glass items from the kitchen were broken as a result of the argument.

Comden suffered a cut on her head, about two inches long, under the hairline, where cuts bleed profusely. At trial, Comden said that she suffered the injury when she failed to lock her wheelchair and fell forward, hitting her head on the sharp edge of the bedroom dresser. She later said that she must have hit her head on a dresser drawer. Comden denied that Moreland had thrown things at her. Moreland put Comden in the

shower to rinse her off, but her head kept bleeding. Blood in the apartment was from Comden's injuries.

That evening, Los Angeles Police Department Officer Marie Sandanaga and her partner responded to Moreland and Comden's home. Moreland answered the door; he had blood on his shirt and hands. He appeared upset. Officer Sandanaga could smell alcohol.

Comden also came to the door. She was crying, fearful, and emotionally upset. At first, she did not want to say what had happened. When she was initially asked what happened, she replied "Nothing."

Eventually, Comden stated that she and Moreland were in the bedroom and had an argument over money. Moreland started picking up objects and throwing them at her. He picked up a glass object, threw it at her from five feet away, and struck her in the head. Blood was coming from under her hair on the left side of her head. An ambulance came.

Officer Lewis and her partner, Officer Briones, also responded to the home. Comden was on a gurney being treated. She had blood on her head, face, and hair. She appeared disheveled, needed a bath, and "was in need of attention." The ambulance took Comden away.

The officers looked inside the house. It was "an absolute mess" it had trash, cockroaches, and broken things. The furniture was overturned, there were holes in the walls, and there was blood in the bedroom and adjoining bathroom. There was broken glass in the living room. There were items all over the bedroom as if someone had thrown things all over the room. There was some blood near the dresser and more blood near the middle of the room. Officer Sandanaga did not see any blood on a dresser drawer. Neither Officer Sandanaga nor Officer Lewis was able to find any hard glass object.

After being away earlier in the day, Broughton came home to find two police cars there. When he got inside, the living room and dining room "looked like a hurricane hit" them; it was "a big mess." The bedroom used by Moreland and Comden was disheveled

and there was blood on the carpet. He did not see any blood on the dresser drawer, but he did not look that closely. There was also broken glass from a broken bottle in the living room.

3. Moreland claims that the blood on his shirt is unrelated to Comden

When Moreland found out that he was being arrested, he became very angry and confrontational. He called Officer Briones a “faggot” and tried to challenge him to fight. He was under the influence of alcohol. He was transported to the police station in the back of a patrol car. Moreland yelled and appeared angry.

At the station, Officer Lewis spoke with Moreland during booking. He said that he had fallen in a pool that had no water in it and had gotten scraped; he claimed that was where the blood had come from. There was an empty pool at the back of the house, and Moreland did have scratches on his arm, consistent with falling on cement.

4. While receiving medical treatment, Comden says that she was injured when Moreland threw things at her

Dr. Yu, an emergency room doctor, saw Comden that evening. Although he did not specifically remember treating Comden, he was able to review the extensive medical report that he had taken, which was taken in the ordinary course of business.

Comden had a three-centimeter laceration on her left scalp, facial swelling and bruising, and bruises on her right forearm. Comden also complained of back pain. The laceration was dressed and cleaned, and Dr. Yu put in four staples. A “significant” amount of force was required to cause a laceration to the scalp. Comden admitted having had some alcohol. At the time of trial, there was still a little scar.

Comden told Dr. Yu that she had been in altercation with her boyfriend, and that she had been struck by an ashtray that her boyfriend had thrown. She told a nurse: “I got beat up by my boyfriend. He was throwing things at me.”

5. Domestic violence victims in a cycle of violence often deny that their abuser harmed them

In her nine years on patrol, Officer Lewis had been involved in approximately 500 domestic violence investigations. In the course of those investigations, she had noticed a

recurring pattern, which was referred to as the “cycle of violence.” The cycle begins with a violent episode, followed by a “honeymoon period,” where the parties make up. During the honeymoon period, victims minimize the incident by changing their account and saying that the abuser was not at fault or by minimizing the extent of their injuries. They also do not want the police involved. Victims are often dependent on their abuser economically, and victims are often embarrassed by the abuse. After that, tension builds until there is another violent episode. The cycle of violence was so called because it repeats itself. Officer Lewis had personally observed the cycle repeat. Based on her experience, a review of the police report, and a conversation with the officer who interviewed Comden, Officer Lewis believed that Comden was in a long-term relationship, she had feelings for her “significant other,” and she was minimizing the incident.

B. Defense

Moreland testified on his own behalf. He and Comden lived together at a house in West Hills; they had been in a relationship for 13 years. Comden drank heavily. Moreland started drinking too, when he could not get Comden to stop, before Christmas 2006. He had an alcohol problem. Alcohol also exacerbated his posttraumatic stress disorder, making it difficult for him to function in taking orders. When he drank, he could become very “immovable,” meaning that he would stand his ground.

When Moreland and Comden moved into the house, Moreland cleaned it. Broughton also lived there. Moreland had gotten really angry with Broughton because Comden had been doing everything to take care of him.

Moreland and Comden had always had a “volatile” relationship. He did not think that the drinking caused any more problems than they normally had. They argued daily.

On July 28, 2007, Moreland was trying to get Comden to agree to move out, but she did not want to move. She said: “Absolutely no way we’re going to move.” Comden’s refusal made Moreland “kind of furious.” He had been drinking “[s]mall amounts” of vodka. He “threw things all over the house,” and lots of things got broken. He said: “I threw—I knocked glasses and bottle[s] of beer and vodka or coke and vodka,

whatever, onto the floor and broke a few of those things.” He might have thrown a bottle of vodka. He also turned over furniture. He admitted that it was possible that he had thrown an ashtray.

Moreland was on the phone when he heard Comden scream. He ran into the bedroom and Comden had a huge gash on her head, which was bleeding. She said that she had fallen and hit her head. Moreland tried to help her and wrapped the wound. Then he took her into the shower to wash her head off. He got blood on himself as a result of helping her. The police arrived within five minutes of Comden’s injury. Moreland said that he informed the police that the blood on his shirt was from Comden having an accident. He had never hurt Comden, and he did not throw anything at her.

DISCUSSION

A. The trial court did not err in allowing Officer Lewis to testify as an expert

We review the trial court’s ruling for abuse of discretion. (*People v. Panah* (2005) 35 Cal.4th 395, 478.)

Evidence Code section 720, subdivision (a), provides: “A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.” Evidence Code section 1107 allows for the admission of expert testimony on domestic violence “if the proponent of the evidence establishes . . . the proper qualifications of the expert witness.” (Evid. Code, § 1107, subd. (b).)

The trial court did not abuse its discretion in finding that Officer Lewis could testify as an expert. She testified that she had a total of 20 years of experience with domestic violence cases. Over the course of those 20 years, she had spoken to 3,000 domestic violence victims. Moreover, as part of her education at the academy, Officer Lewis was trained on how to interview domestic violence victims and on domestic violence investigations. She had received a minimum of 40 hours training on

investigative skills and the cycle of violence, all relating to domestic violence. She was also tested on the course and had passed the test.

As an officer, Officer Lewis received in-the-field training for a year, where she was supervised in her handling of investigations. She also had frequent conversations with an officer in the domestic violence unit.

Officer Lewis also testified that she had been on patrol for nine years, and during that time she had been involved in approximately 500 domestic violence investigations. In the course of those investigations, she had interviewed victims and defendants. Officer Lewis had noticed a recurring pattern in those investigations.

Finally, Officer Lewis explained what the cycle of violence entailed.

As the trial court found, this evidence establishes that Officer Lewis was qualified to testify as an expert on the cycle of violence. Her testimony was based upon her experience and her training. (See, e.g., *People v. Newman* (1944) 24 Cal.2d 168, 174–176; *People v. Ojeda* (1990) 225 Cal.App.3d 404, 408.)

Moreland urges us to reverse, claiming that Officer Lewis was deficient as an expert when compared to the expert on domestic violence who testified in *People v. Brown* (2001) 96 Cal.App.4th Supp. 1. We are not convinced. While the expert in *People v. Brown* may have been more qualified than Officer Lewis, that case does not show that Officer Lewis lacked the minimum qualifications to testify as an expert on the cycle of violence.

Moreland also challenges Officer Lewis's expert testimony by claiming that she lacked the requisite experience "to offer an opinion on whether Comden's injury was 'an accident.'" This argument is off point. Officer Lewis offered expert testimony regarding domestic violence, namely the cycle of violence; she opined that Comden was minimizing her injuries, an act consistent with that of a victim of domestic violence. She did not testify as to what occurred.

Moreland also argues that the prosecutor "aggravated the prejudicial effect of [Officer] Lewis's testimony by relying on it during closing argument." Given our conclusion that Officer Lewis's testimony was proper, it follows that the prosecutor did

not “aggravate[] the prejudicial effect” of her expert testimony. In any event, we note that the prosecutor only briefly mentioned the cycle of violence in her closing argument. And, defense counsel countered that the cycle of violence testimony had no application in this case because there was no evidence of any prior acts of violence.

Regardless, any alleged error was harmless. Pursuant to Evidence Code section 353 and section 13 of article VI of the California Constitution, a judgment shall not be set aside for the erroneous admission of evidence unless the error resulted in a miscarriage of justice. (*People v. Breverman* (1998) 19 Cal.4th 142, 172–173.) As explained in *People v. Watson* (1956) 46 Cal.2d 818, 836, reversal is not required unless but for the complained of error, there is a reasonable probability that the defendant would have obtained a better result.

Here, Moreland cannot establish that but for Officer Lewis’s testimony, he would have obtained a better result. Comden, Broughton, and Moreland all testified that the relationship between Comden and Moreland was volatile and involved a lot of fighting. Broughton recalled having seen Comden with a black eye. Broughton also stated that Moreland got angry when he was drunk, and Comden confirmed that on the night of the attack, Moreland was angry and drunk. Moreland even admitted that he had a problem with alcohol and that he became stubborn when faced with orders. He also admitted that on the night of the attack, he had been drinking, Comden told him that they were not going to move, and he got “kind of furious.”

As a result of Moreland’s anger, he also admitted that he was throwing glass objects around, possibly even an ashtray, at the time of the offense. Although officers never found the glass object believed to be the weapon, Moreland could have easily injured Comden with one of the glass bottles, which Moreland admitted to throwing, and later ended up broken. Even Comden admitted that Moreland, angry and drunk, was messing up the house and throwing things. Comden’s inability to precisely describe the object thrown at her is not surprising in light of her own intoxication and ensuing head injury.

Moreover, Comden repeatedly reported that Moreland had injured her when talking to Officer Sandanaga, Dr. Yu, and a nurse. Indeed, her emotionally upset state at the time of her initial report lends credence to the statements given at that time. Comden also confirmed her testimony at the preliminary hearing that Moreland had thrown something at her. At trial, Comden essentially recanted her prior statements, but her recantation was obviously the product of her love for Moreland and her desire to have him continue to take care of her. While Officer Lewis's testimony on the cycle of violence helped explain the recantation, Comden's testimony as a whole made the reason for her recantation apparent. Also, Moreland's anger at the time of arrest, and his lie about the source of blood, demonstrated consciousness of guilt.

Finally, in accordance with CALCRIM No. 332, the trial court instructed the jury that it was not required to accept the expert testimony; the meaning of importance of expert testimony was up to the jury; and the jury should consider the expert's qualifications in evaluating the expert testimony. The jury was also told, pursuant to CALCRIM No. 850, that it could "consider [Officer Lewis's testimony] only in deciding whether or not . . . Comden's conduct was not inconsistent with the conduct of someone who has been abused, and in evaluating the believability of her testimony." Thus, the jury was free to weigh, even discount, Officer Lewis's testimony.

The fact that the jury deliberated for seven and one-half hours and made numerous requests to the trial court, including that Officer Lewis's testimony be read back to them twice, does not aid Moreland's cause on appeal. If anything, it confirms that the jurors took their obligation seriously, and carefully considered the evidence before reaching their decision. (*People v. Walker* (1995) 31 Cal.App.4th 432, 439.)

In light of the trial court's instructions and the strong evidence of guilt, there is no reasonable probability that Moreland would have received a better result if Officer Lewis's expert testimony had been excluded. Accordingly, any alleged error was harmless.

B. The trial court did not err in allowing Dr. Yu's testimony

At trial, Dr. Yu had to rely upon his notes to refresh his memory regarding his treatment of Comden. He stated that he correctly wrote down the following: “[Comden] reported got into altercation with boyfriend and was struck by him and with an . . . ashtray, which was thrown by him.” Dr. Yu also testified that his nurse wrote: “[Comden's] chief complaint . . . ‘I got beaten up by my boyfriend. He was throwing things at me.’” Moreland argues that this testimony constitutes inadmissible hearsay, which should have been precluded. We disagree.

Dr. Yu's testimony involved two layers of hearsay: (1) Dr. Yu's and the nurse's reports of the statement into medical records; and (2) Comden's statements to Dr. Yu and the nurse. Regardless of whether the trial court erred in admitting Dr. Yu's testimony, any error was harmless. (*People v. Breverman, supra*, 19 Cal.4th at pp. 172–173.)

As noted above, the evidence of Moreland's guilt was strong. Thus, even if Comden's statements to Dr. Yu and the nurse had been excluded,² Comden's statement to Officer Sandanaga, made immediately after her injury, was strong evidence that contradicted her trial recantation. Moreover, Comden's statements to the medical personnel played a minor role in closing arguments. Under these circumstances, there is no reasonable probability that Moreland would have received a better result if Comden's prior statements to Dr. Yu and the nurse had been excluded.

² Moreland argues that because Comden made these statements “while drunk and medicated,” they should have been excluded. We note that Comden testified that at the time of the incident she was “a little drunk” and “was on medication”; the jury was free to consider this evidence during its deliberations.

DISPOSITION

The judgment is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ